

## **REMARKS**

In the Office Action dated March 8, 2007, claims 1-20 were presented for examination. Claims 14 and 15 were rejected under 35 U.S.C. §101. Claims 1-13 were rejected under 35 U.S.C. §102(b). Claims 14-20 were rejected under 35 U.S.C. §103(a).

The following remarks are provided in support of the pending claims and responsive to the Office Action of March 8, 2007 for the pending application.

### **I. Examiner's Interview of May 31, 2007**

In response to the Examiner's Interview Summary dated May 31, 2007, Applicant's Attorney hereby submits a summary of the interview.

On May 31, 2007, Applicants' Attorney, Examiner Johnson, and Examiner Abel-Jalil met for an in-person interview at the U.S. Patent and Trademark Office. There was no exhibit or demonstration of the invention provided. The claims discussed during the interview included outstanding claims 1-20. The prior art reference U.S. Patent No. 6,178,529 to *Short et al.* was discussed as it applies to the two prior art rejections of the outstanding claims.

This interview took place following issuance of a Non-Final Office Action and prior to submission of a response thereto. Prior to the interview, Applicant's Attorney provided Examiner Johnson with a proposed amendment to the claims to further define the invention over the prior art of record. During the course of the interview, elements in the specification were discussed in terms of further defining Applicant's invention over the prior art of record. It was discussed how the spirit of the proposal should overcome the prior art of record, but that a formal response would necessitate an updated search by the Examiner.

### **II. Claim Amendments**

Claims 1, 8, and 14 have each been amended to elaborate on the version control system, and more specifically, the disk header record and the version control record. Support for these

elements can be found in the specification on page 6, first and second paragraphs. In addition, Applicant has added new claims 21-23. Support for the elements in new claims 21-23 can be found in the specification on page 6, first paragraph. No new subject matter has been added to the application in association with the amendment to the claims. Accordingly, Applicant respectfully requests that the Examiner enter the amendments submitted herewith.

## **II. Rejection Under 35 U.S.C. §101**

In the Office Action dated March 8, 2007, the Examiner assigned to the application rejected claims 14 and 15 under 35 U.S.C. §101 as being directed to non-statutory subject matter. More specifically, the Examiner indicated that the terms “signal bearing medium” and “modulated carrier signal” are limited to non-tangible embodiments. Applicant has amended claim 14 and canceled claim 15. The amendment to claim 14 removes the non-tangible elements and further defines the statutory subject matter of the invention. Furthermore, the amendment to claim 14 as presented herein was discussed with the Examiner during the interview of May 31, 2007. During the course of the interview, it was determined that the amendment to claim 14 should overcome the rejection presented herein. Accordingly, Applicant respectfully requests that the Examiner remove the rejection to claims 14 and 15 under 35 U.S.C. §101, and direct allowance of claim 14.

## **III. Rejection Under 35 U.S.C. §102(b)**

In the Office Action dated March 8, 2007, the Examiner assigned to the application rejected claims 1-13 under 35 U.S.C. §102(b) as being anticipated by *Short et al.*, U.S. Patent No. 6,178,529.

U.S. Patent No. 6,178,529 to *Short et al.* pertains to monitoring a resource object in a server cluster. In one embodiment, *Short et al.* handles failure recovery of one or more resource objects. Furthermore, *Short et al.* teaches a process for forming a cluster and for a server node to join a cluster. With respect to software components and compatibility “the cluster software components are able to treat disparate resource objects, such as physical devices and application programs, identically, ...” See Col. 8, lines 11-14.

In contrast, Applicant's invention pertains to insuring compatibility of a new cluster member with a shared resource. Among the novel elements of Applicant's invention is the process of ensuring that a version control system, including a disk header record and version control record to organize meta data, of a shared resource are employed and examined for compatibility. There is no teaching in *Short et al.* to utilize or otherwise employ a version control system having a disk header record and a version control record to organize meta data. Applicant has amended claims 1, 8, and 14 to incorporate the elements of Applicant's invention pertaining to the version control system.

Based upon the above, it is Applicant's position that the rejection under *Short et al.* is improper and should be removed. In order for the claimed invention to be anticipated under 35 U.S.C. §102(b), the prior art must teach all claimed limitations presented by the claimed invention. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."<sup>1</sup> *Short et al.* pertains to forming a cluster with version control. However, the version control of *Short et al.* does not expressly or inherently teach use of the disk header and metadata in the manner claimed by Applicant. See Col. 9, line 20-25. Since *Short et al.* does not expressly or inherently teach version control in the manner claimed by Applicant, clearly *Short et al.* does not anticipated te invention of Applicant based upon the legal definition of anticipation. Accordingly, Applicant respectfully requests that the Examiner remove the rejection of claims 1-13 and grant an allowance thereof.

#### **IV. Rejection Under 35 U.S.C. §103(a)**

In the Office Action dated March 8, 2007, the Examiner assigned to the application rejected claims 14-20 under 35 U.S.C. §102(b) as being unpatentable over *Short et al.*, U.S. Patent No. 6,178,529 in view of *Charnock et al.*, U.S. Patent No. 7,143,091

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<sup>1</sup>MPEP §2131 (citing *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P. Q. 2d 1051, 1053 (Fed. Cir. 1987)).

Applicant's remarks pertaining to *Short et al.* made above are hereby incorporated by reference.

As noted above, *Short et al.* does not teach all of the elements of Applicant's claims 1-13. Furthermore, Applicant's claims 14-20 are article claims that incorporate the elements of claims 1-13. In view of the rejection under 35 U.S.C. §101, Applicant has amended claim 14 to remove the limitation associated with the "signal-bearing medium". Furthermore, claim 14 has been amended to further elaborate on the version control system employed within the cluster. There is no teaching in *Short et al.* or *Charnock et al.* to provide the amended elements. The MPEP states that, to establish a prima facie case of obviousness, "the prior art reference (or references when combined) must teach or suggest all the claim limitations."<sup>2</sup> Because neither *Short et al.* or *Charnock et al.* teach the amended elements of claim 14, not every claim limitation of claims 14-20 is taught. Accordingly, Applicant respectfully requests that the Examiner remove the rejection of claims 14-20 under 35 U.S.C. §103(a) and direct allowance thereof.

## **V. Conclusion**

Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. No new subject matter has been added to the application with the amendment to the claims presented herewith. Furthermore, Applicant is not conceding in this application that the claims are not patentable over the art cited by the Examiner, as the present amendments and cancellation are only for facilitating expeditious prosecution of the allowable subject matter noted by the Examiner. Applicant respectfully reserves the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Accordingly, Applicant respectfully requests that the Examiner indicate allowability of claims 1-12, 14, 16-19, and 21-23, and that the application pass to issue. If the Examiner believes, for any reason, that personal communication will expedite prosecution of the application, the Examiner is hereby invited to telephone the undersigned at the number provided.

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<sup>2</sup> MPEP §2143.03 (citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)).

For the reasons outlined above, withdrawal of the rejection of record and an allowance of this application are respectfully requested.

Respectfully submitted,

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